

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 3050



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2016 APR 18 AM 10:49

April 18, 2016 **SENSITIVE**

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *ewh/fo*
Staff Director

FROM: Patricia C. Orrock *PO/nmc*
Chief Compliance Officer

Debbie Chacona *DC/nmc*
Assistant Staff Director
Reports Analysis Division

BY: *KDP* Kristin D. Roser/Marlene Colucci *M.C.*
Reports Analysis Division
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2016 12 Day Pre-Primary
Report (Texas) for the Administrative Fine Program

Attached is a list of political committees and their treasurers who failed to timely file the 2016 12 Day Pre-Primary Report for the Texas Primary Election in accordance with 52 U.S.C. § 30104(a). The 12 Day Pre-Primary Report was due on February 18, 2016 and the Primary Election was held on March 1, 2016.

The committees listed on the attached RTB Circulation Report failed to file the election sensitive report by the required due date. Election sensitive reports filed more than four days prior to the election are considered late, and reports not filed more than four days prior to the election are considered not filed. In accordance with the schedule of civil money penalties for reports at 11 CFR § 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

An explanation of the civil money penalties calculation for the committees that failed to file the report is outlined below:

The committee (AF 3049) represents a candidate that participated in the 2016 Primary in Texas's House Race. The committee was required to file a 2016 12 Day Pre-Primary Report (12P) covering January 1, 2016 through February 10, 2016 (41 days). In

order to determine the civil money penalty, an estimated level of activity was calculated using a per diem average by multiplying the previous activity reported for the 2015-2016 election cycle (\$127,950) by 22.28% (the number of days required in 12P (41) divided by the number of days included in the Committee's 2015-2016 election cycle reports (184)).

Recommendation

1. Find reason to believe that the political committees and their treasurers, in their official capacity, listed on the RTB Circulation Report violated 52 U.S.C. § 30104(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

Federal Election Commission
Reason to Believe Circulation Report
2016 PRE-PRIMARY Election Sensitive 02/18/2016 AUTH (TX)

| AF# | Committee ID | Committee Name | Candidate Name | Treasurer | Threshold | PV | Receipt Date | Days Late | LOA | RTBI Penalty |
|------|--------------|------------------------------------|-----------------------|-----------------|-----------|----|--------------|-----------|----------------|--------------|
| 3049 | C00579664 | CITIZENS FOR XAVIER SALINAS | XAVIER SALINAS | RAY PEREZ | \$127,950 | 0 | | Not Filed | \$28,507 (est) | \$1,400 |
| 3050 | C00254573 | EDDIE BERNICE JOHNSON FOR CONGRESS | EDDIE BERNICE JOHNSON | RANDY WHITAKER | \$406,749 | 0 | 2/26/2016 | Not Filed | \$10,870 | \$1,090 |
| 3051 | C00473868 | GIGLIOTTI FOR CONGRESS | LOUIS P. GIGLIOTTI | KAREN GIGLIOTTI | \$229,542 | 0 | 3/1/2016 | Not Filed | \$83,615 | \$4,400 |

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Reason To Believe Recommendation –)
2016 12 Day Pre-Primary Report for the)
Administrative Fine Program (Texas):)
CITIZENS FOR XAVIER SALINAS, and) AF# 3049
PEREZ, RAY as treasurer;)
EDDIE BERNICE JOHNSON FOR) AF# 3050
CONGRESS, and WHITAKER, RANDY)
MR. as treasurer;)
GIGLIOTTI FOR CONGRESS, and) AF# 3051
KAREN GIGLIOTTI as treasurer;)

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on April 20, 2016 the Commission took the following actions on the Reason To Believe Recommendation – 2016 12 Day Pre-Primary Report for the Administrative Fine Program (Texas) as recommended in the Reports Analysis Division's Memorandum dated April 18, 2016, on the following committees:

AF#3049 Decided by a vote of 6-0 to: (1) find reason to believe that CITIZENS FOR XAVIER SALINAS, and PEREZ, RAY, in his official capacity as treasurer, violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter.

Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#3050 Decided by a vote of 6-0 to: (1) find reason to believe that EDDIE BERNICE JOHNSON FOR CONGRESS, and WHITAKER, RANDY MR., in his official capacity as treasurer, violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#3051 Decided by a vote of 6-0 to: (1) find reason to believe that GIGLIOTTI FOR CONGRESS, and KAREN GIGLIOTTI, in her official capacity as treasurer, violated 52 U.S.C. 30104(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Attest:

April 21, 2016
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 21, 2016

Randy Whitaker, in official capacity as Treasurer
Eddie Bernice Johnson for Congress
3102 Maple Avenue
Dallas, TX 75201

C00254573
AF#: 3050

Dear Mr. Whitaker:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file a 12 Day Pre-Primary Report of Receipts and Disbursements in any calendar year during which there is a regularly scheduled election for which the candidate is seeking election or nomination for election. This report, covering the period January 1, 2016 through February 10, 2016, shall be filed no later than February 18, 2016. 52 U.S.C. § 30104(a). Records at the Federal Election Commission ("FEC") indicate that this report was filed on February 26, 2016, eight (8) days late.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 52 U.S.C. § 30104(a). 52 U.S.C. § 30109g(a)(4). On April 20, 2016, the FEC found that there is reason to believe ("RTB") that Eddie Bernice Johnson for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) by failing to file timely this report on or before February 18, 2016. Based on the FEC's schedules of civil money penalties at 11 C.F.R. § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$1,090. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-111.46. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 C.F.R. § 111.34. Your payment of \$1,090 is due within forty (40) days of the finding, or by May 30, 2016, and is based on these factors:

Election Sensitivity of Report: Election Sensitive

Level of Activity: \$10,870

Number of Days Late: Not Filed (reports not filed prior to four (4) days before the Primary Election held on March 1, 2016 are considered not filed for the purpose of calculating the penalty)

Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must include the AF# (found at the top of page 1 under your committee's identification number) and be received within forty (40) days of the Commission's RTB finding, or May 30, 2016. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to: (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. District Court under 52 U.S.C. § 30109. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Eddie Bernice Johnson for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate

action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

3. If You Choose to Pay the Civil Money Penalty

If you should decide to pay the calculated civil money penalty, follow the payment instructions on page 4 of this letter. You should make payment within 30 days of receipt of this letter.

NOTICE REGARDING PARTIAL PAYMENTS AND SETTLEMENT OFFERS

4. Partial Payments

If you make a payment in an amount less than the calculated civil money penalty, the amount of your partial payment will be credited towards the full civil money penalty that the Commission assesses upon making a final determination.

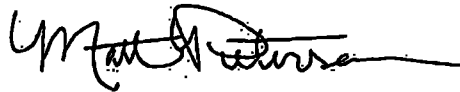
5. Settlement Offers

Any offer to settle or compromise a debt owed to the Commission, including a payment in an amount less than the calculated civil money penalty assessed or any restrictive endorsements contained on your check or money order or proposed in correspondence transmitted with your check or money order, will be rejected. Acceptance and deposit or cashing of such a restricted payment does not constitute acceptance of the settlement offer. Payments containing restrictive endorsements will be deposited and treated as a partial payment towards the civil money penalty that the Commission assesses upon making a final determination. All unpaid civil money penalty amounts remaining will be subject to the debt collection procedures set forth in Section 2, above.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 52 U.S.C. § 30109(a)(2). Unless you notify the FEC in writing that you wish the matter to be made public, it will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) until it is placed on the public record at the conclusion of this matter in accordance with 11 CFR § 111.42.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Marlene Colucci in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Matthew S. Petersen
Chair

ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$1,090 for the 2016 Pre-Primary Report. The payment is due within 30 days of receipt of this letter.

You may remit payment by ACH withdrawal from your bank account, or by debit or credit card through Pay.gov, the federal government's secure portal for online collections. Visit www.fec.gov/af/pay.shtml to be directed to Pay.gov's Administrative Fine Program Payment form.

This penalty may also be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
P.O. Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please send to:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Eddie Bernice Johnson for Congress

FEC ID#: C00254573

AF#: 3050

PAYMENT DUE DATE: May 30, 2016

PAYMENT AMOUNT DUE: \$1,090



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

2016 SEP 13 AM 8:51

September 13, 2016 **SENSITIVE**

MEMORANDUM

TO: The Commission

THROUGH: Alec Palmer *AP*
Staff Director

FROM: Patricia C. Orrock *DC/PCO*
Chief Compliance Officer

Debbie Chacona *DC*
Assistant Staff Director
Reports Analysis Division

BY: *KDR* Kristin D. Roser/Ben Holly *B.H.*
Reports Analysis Division
Compliance Branch

SUBJECT: Administrative Fine Program – Final Determination Recommendation for the
2016 12 Day Pre-Primary Report (Texas)

Attached is a list of political committees and their treasurers against which the Commission has found reason to believe (RTB) and assessed proposed civil money penalties calculated at RTB for failure to file or failure to timely file the 2016 12 Day Pre-Primary Report. The committees have paid the civil money penalties requested at RTB.

In accordance with 11 CFR § 111.34, the Commission shall send a final determination notice to the respondents that have paid the civil money penalties.

RAD Recommendation

- (1) Make a final determination that the political committees and their treasurers, in their official capacity, listed on the attached report violated 52 U.S.C. § 30104(a) and assess the final civil money penalties so indicated.
- (2) Send the appropriate letters.

9/13/2016 4:07 PM

Federal Election Commission
FD Circulation Report - Fine Paid
2016 PRE-PRIMARY Election Sensitive 02/18/2016 AUTH (TX)

| AF# | Committee Name | Candidate Name | Committee ID | Treasurer | Receipt Date | Days Late | LOA | PV | RTB Date | RTB Penalty | Final Money Penalty | Date Paid | Amount Paid |
|------|------------------------------------|-----------------------|--------------|-----------------|--------------|-----------|----------|----|------------|-------------|---------------------|------------|-------------|
| 3049 | CITIZENS FOR XAVIER SALINAS | XAVIER SALINAS | C00579684 | RAY PEREZ | 06/29/2016 | Not Filed | \$31,443 | 0 | 04/20/2016 | \$1,400 | \$1,400 | 05/23/2016 | \$1,400 |
| 3050 | EDDIE BERNICE JOHNSON FOR CONGRESS | EDDIE BERNICE JOHNSON | C00254573 | RANDY WHITAKER | 02/26/2016 | Not Filed | \$10,870 | 0 | 04/20/2016 | \$1,090 | \$1,090 | 05/20/2016 | \$1,090 |
| 3051 | GIGLIOTTI FOR CONGRESS | LOUIS P. GIGLIOTTI | C00473868 | KAREN GIGLIOTTI | 03/01/2016 | Not Filed | \$83,615 | 0 | 04/20/2016 | \$4,400 | \$4,400 | 05/13/2016 | \$4,400 |

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Administrative Fine Program – Final)
Determination Recommendation for the)
2016 12 Day Pre-Primary Report (Texas):)
CITIZENS FOR XAVIER SALINAS, and) AF# 3049
PEREZ, RAY as treasurer;)
EDDIE BERNICE JOHNSON FOR) AF# 3050
CONGRESS, and WHITAKER, RANDY)
MR. as treasurer;)
GIGLIOTTI FOR CONGRESS, and) AF# 3051
KAREN GIGLIOTTI as treasurer;)

CERTIFICATION

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on September 15, 2016 the Commission took the following actions on the Administrative Fine Program – Final Determination Recommendation for the 2016 12 Day Pre-Primary Report (Texas) as recommended in the Reports Analysis Division's Memorandum dated September 13, 2016, on the following committees:

AF#3049 Decided by a vote of 6-0 to: (1) make a final determination that CITIZENS FOR XAVIER SALINAS, and PEREZ, RAY in his official capacity as treasurer, violated 52 U.S.C. 30104(a) and assess the final civil money penalty so indicated; (2) send the appropriate letter. Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Federal Election Commission
Certification for Administrative Fines
September 15, 2016

Page 2

AF#3050 Decided by a vote of 6-0 to: (1) make a final determination that EDDIE BERNICE JOHNSON FOR CONGRESS, and WHITAKER, RANDY MR. in his official capacity as treasurer, violated 52 U.S.C. 30104(a) and assess the final civil money penalty so indicated; (2) send the appropriate letter. Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

AF#3051 Decided by a vote of 6-0 to: (1) make a final determination that GIGLIOTTI FOR CONGRESS, and KAREN GIGLIOTTI in her official capacity as treasurer, violated 52 U.S.C. 30104(a) and assess the final civil money penalty so indicated; (2) send the appropriate letter. Commissioners Goodman, Hunter, Petersen, Ravel, Walther, and Weintraub voted affirmatively for the decision.

Attest:

September 15, 2016
Date

Shawn Woodhead Werth
Shawn Woodhead Werth
Secretary and Clerk of the Commission



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

September 16, 2016

Randy Whitaker, in official capacity as Treasurer
Eddie Bernice Johnson for Congress
3102 Maple Avenue, Suite 605
Dallas, TX 75201

C00254573
AF#: 3050

Dear Mr. Whitaker:

On April 20, 2016, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Eddie Bernice Johnson for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a) for filing late or failing to file the 2016 Pre-Primary Report. By letter dated April 21, 2016, the Commission notified you of the RTB finding and the civil money penalty calculated at the RTB stage totaling \$1,090 in accordance with the schedule of penalties at 11 CFR § 111.43.

On May 20, 2016, the FEC received payment of the civil money penalty calculated at the RTB stage. The FEC made a final determination on September 15, 2016 that Eddie Bernice Johnson for Congress and you, in your official capacity as treasurer, violated 52 U.S.C. § 30104(a), assessed a civil money penalty in the amount of \$1,090 in accordance with 11 CFR § 111.43, and voted to close the file.

The confidentiality provisions at 52 U.S.C. § 30109(a)(12) no longer apply and this matter is now public. Pursuant to 11 CFR §§ 111.42(b) and 111.20(c), the file will be placed on the public record within thirty (30) days from the date of this notification.

If you have any questions regarding this matter, please contact Ben Holly on our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read "Matthew S. Petersen", is written over a horizontal line.

Matthew S. Petersen
Chair

FEDERAL ELECTION COMMISSION

Lockbox: GLX-979058 Ledger Date 05/19/2016

usbank.

St. Louis GA Lockbox
(314) 425-1818

US Bank
St. Louis GA Lockbox
(314) 425-1818

DATE: 5/19/16
AMOUNT: \$1,090.00
FOR: [Signature]
ACCOUNT: [Signature]
TID: Y-3056052

| Batch | Item | TID | Batch Total | Amount |
|-------|------|-----------|-------------|------------|
| 1 | 1 | Y-3056052 | \$1,140.00 | \$1,090.00 |

DEPOSIT SLIP

